

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

Case No.

Saxon HOLT, an individual,

Plaintiff,

v.

VISTA HORTICULTURAL GROUP, INC.
d/b/a “Eden Brothers,” and John Does No.
1 through 5, individuals,

Defendants.

COMPLAINT
[JURY TRIAL DEMANDED]

Plaintiff Saxon Holt (“Holt”), by and through undersigned counsel, brings this Complaint and Jury Demand against defendant VISTA HORTICULTURAL GROUP, INC. (“Vista”), and defendants John Does No. 1 through 5 (collectively, the “Doe Defendants”) , for damages and injunctive relief, and in support thereof states as follows:

SUMMARY OF THE ACTION

1. Plaintiff Holt brings this action for violations of exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute Holt’s original copyrighted works of authorship.
2. Holt is a professional photographer whose photographic work focuses on plants and landscapes. Holt is the author and principal photographer of several books on gardening, botany and photography. His photographs have been featured in, *inter alia*, *Architectural Digest* and *Smithsonian* magazines. Holt resides in California.
3. Upon information and belief, Defendant Vista is a Wyoming corporation maintaining its principal office in Arden, North Carolina. A true and correct copy of Vista’s entity information

from the online database of the North Carolina Department of State, dated April 9, 2020, is attached hereto as **Exhibit 1**. On information and belief, Vista is doing business under the assumed name “Eden Brothers” and/or “Eden Bros.” A copy of a page from the edenbrothers.com website, attached hereto as **Exhibit 2**, shows a copyright notice in the content of the website naming Vista and unnamed subsidiaries as copyright holders.

4. Holt alleges that Vista copied a photograph in which Holt holds copyright, and distributed and/or publicly displayed that photograph in order to advertise, market, and promote Vista's business activities.

JURISDICTION AND VENUE

5. This is an action arising under the Copyright Act, 17 U.S.C. §§ 501, et seq.

6. This Court has subject matter jurisdiction over these claims pursuant to 28 USC §§ 1331 and 1338(a).

7. Vista is subject to personal jurisdiction in North Carolina, and venue in this district is proper under 28 U.S.C. § 1400(a), because Vista's primary place of business is in this district.

THE WORK AT ISSUE

8. Holt owns the copyright to the photograph which is shown below and referred to herein as the "Registered Work"



9. Holt registered the Registered Work with the Register of Copyrights on November 15, 2011 and was assigned the registration number VAu 1-089-845. A true and correct copy of the Certificate of Registration is attached hereto as **Exhibit 3**. At all relevant times Holt was the owner of the Registered Work.

VISTA'S INFRINGEMENT

10. On a date after the Registered Work was registered with the Register of Copyrights, but prior to the filing of this action, Vista copied the Registered Work.

11. After Vista copied the Registered Work, it distributed and/or publicly displayed the Registered Work on the internet to promote the sale of Vista's goods and services. Attached

hereto as **Exhibit 4** is a true and correct copy of the Registered Work displayed on Vista's website.

12. Holt has never given Vista permission or authority to copy, distribute, or publicly display the Registered Work.

13. Holt notified Vista of the allegations set forth herein by email and U.S. Mail in February 2019, and again in May, 2019.

14. Vista has never responded to those notices, and the Registered Work remains on Vista's website.

15. Holt has engaged the undersigned attorneys and has agreed to pay them a reasonable fee.

COUNT 1
DIRECT COPYRIGHT INFRINGEMENT - DAMAGES

16. Holt incorporates the allegations of paragraphs 1-15 of this Complaint as if fully set forth herein.

17. Holt holds a valid copyright in the Registered Work.

18. Holt registered the Registered Work with the Register of Copyrights pursuant to U.S.C. § 411(a).

19. Vista subsequently copied, displayed, and/or distributed the Registered Work at issue without Holt's authorization in violation of 17 U.S.C. § 106.

20. Vista performed the acts alleged in the course and scope of its business activities.

21. Despite repeated notice to Vista of its infringement of the Registered Work, Vista persisted, and still persists, in publicly displaying the Registered Work on the edenbrothers.com website.

22. Accordingly, Vista's continued public display of the Registered Work constitutes willful infringement pursuant to 17 U.S.C. § 504(c)(2), and Holt is entitled to the greater of actual

damages or statutory damages in an to be determined at trial of between \$750 and \$150,000, plus its costs and attorneys' fees pursuant to 17 U.S.C. §505.

COUNT 2
VICARIOUS AND/OR CONTRIBUTORY
COPYRIGHT INFRINGEMENT - DAMAGES

23. Holt incorporates the allegations of paragraphs 1-22 of this Complaint as if fully set forth herein.

24. On information and belief, certain officers, proprietors and/or agents of Vista (the Doe Defendants), and each of them, knowingly induced, participated in, aided and abetted, and resultantly profited from the illegal reproduction, distribution and/or public display of the Registered Work.

25. On information and belief, the Doe Defendants had the right and ability to supervise the infringing conduct and had a direct financial interest in the infringing conduct.

26. By reason of the Doe Defendants' acts, Plaintiff is entitled to damages in an amount to be determined at trial.

27. Moreover, even after repeated notice of infringement, Vista still persists in publicly displaying the Registered Work on the edenbrothers.com website. As the Doe Defendants have the right and ability to supervise Vista's infringing conduct, have a direct financial interest in that infringing conduct, have been notified of that infringing conduct, and still permit, if not encourage, Vista to persist in its infringing conduct, such conduct is willful, and the Doe Defendants are liable for the greater of actual damages or statutory damages in an amount to be determined at trial of between \$750 and \$150,000, plus its costs and attorneys' fees pursuant to 17 U.S.C. §505.

COUNT 3
COPYRIGHT INFRINGEMENT - PERMANENT INJUNCTION

28. Holt incorporates the allegations of paragraphs 1-27 of this Complaint as if fully set forth herein.

29. Holt holds a valid copyright in the Registered Work.

30. Holt registered the Registered Work with the Register of Copyrights pursuant to U.S.C. § 411(a).

31. Vista and/or the Doe Defendants subsequently copied, displayed, and/or distributed the Registered Work at issue without Holt's authorization in violation of 17 U.S.C. § 106.

32. Vista performed the acts alleged in the course and scope of its business activities.

33. Despite repeated notice to Vista of its infringement of the Registered Work, Vista persisted, and still persists, in publicly displaying the Registered Work on its website.

34. As a direct and proximate result of Vista's infringement, Holt has been and continues to be damaged and the harm caused to Holt is continuing and therefore not wholly compensable by monetary damages.

35. Accordingly, pursuant to 17 U.S.C. §502, Holt is entitled to permanent injunctive relief barring defendants from further reproduction, distribution and public display of the Registered Work.

WHEREFORE, Holt prays for judgment against the defendants that:

- a. Vista, the Doe Defendants, and Vista's officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. § 106;

- b. Vista and/or the Doe Defendants be required to pay Holt his actual damages and Vista's profits attributable to the infringement, or, at Holt's election, statutory damages, as provided in 17 U.S.C. § 504;
- c. Holt be awarded his attorneys' fees and costs of suit pursuant to 17 U.S.C. § 505; and
- d. Holt be awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

Holt hereby demands a trial by jury of all issues so triable.

DATED: April 27, 2020

Respectfully submitted,

/s/ Bo Caudill

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Pending Admission Pro Hac Vice

Attorneys for Plaintiff Saxon Holt.

Complaint

EXHIBIT 1

Holt v. Vista Horticultural Group, Inc., et al.

North Carolina Dep't of State
Database Entry for
Vista Horticultural Group, Inc.

• File an Annual Report/Amend an Annual Report • Upload a PDF Filing • Order a Document Online •
Add Entity to My Email Notification List • View Filings • Print a Pre-Populated Annual Report form •
Print an Amended a Annual Report form

Business Corporation

Legal Name

VISTA HORTICULTURAL GROUP, INC.

Information

SosId: 1506196

Status: Current-Active

Date Formed: 3/22/2016

Citizenship: Foreign

State of Incorporation: WY

Fiscal Month: December

Annual Report Due Date: April 15th

CurrentAnnual Report Status:

Registered Agent: Randon, Sabine

Addresses

Mailing

2099 Brevard Rd
Arden, NC 28704

Principal Office

2099 Brevard Rd
Arden, NC 28704

Reg Office

2099 Brevard Rd
Arden, NC 28704

Reg Mailing

2099 Brevard Rd
Arden, NC 28704

Officers

Corporate Officer

Terence C Allen
2099 Brevard Rd
Arden NC 28704

Corporate Officer

Sabine K Randon
2099 Brevard Rd
Arden NC 28704

Stock

Complaint

EXHIBIT 2

Holt v. Vista Horticultural Group, Inc., et al.

Copyright Registration Certificate
No. VAu 1-089-845

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
VAu 1-089-845

**Effective date of
registration:**
November 15, 2011

Title

Title of Work: 3097_photos_10_2011

Completion/Publication

Year of Completion: 2011

Author

■ **Author:** Saxon Holt
Author Created: photograph(s)

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Saxon Holt
P.O Box 1826, Novato, CA, 94948

Rights and Permissions

Name: Saxon Holt
Email: info@saxoholt.com **Telephone:** 415-898-8880
Address: P.O Box 1826
Novato, CA 94948

Certification

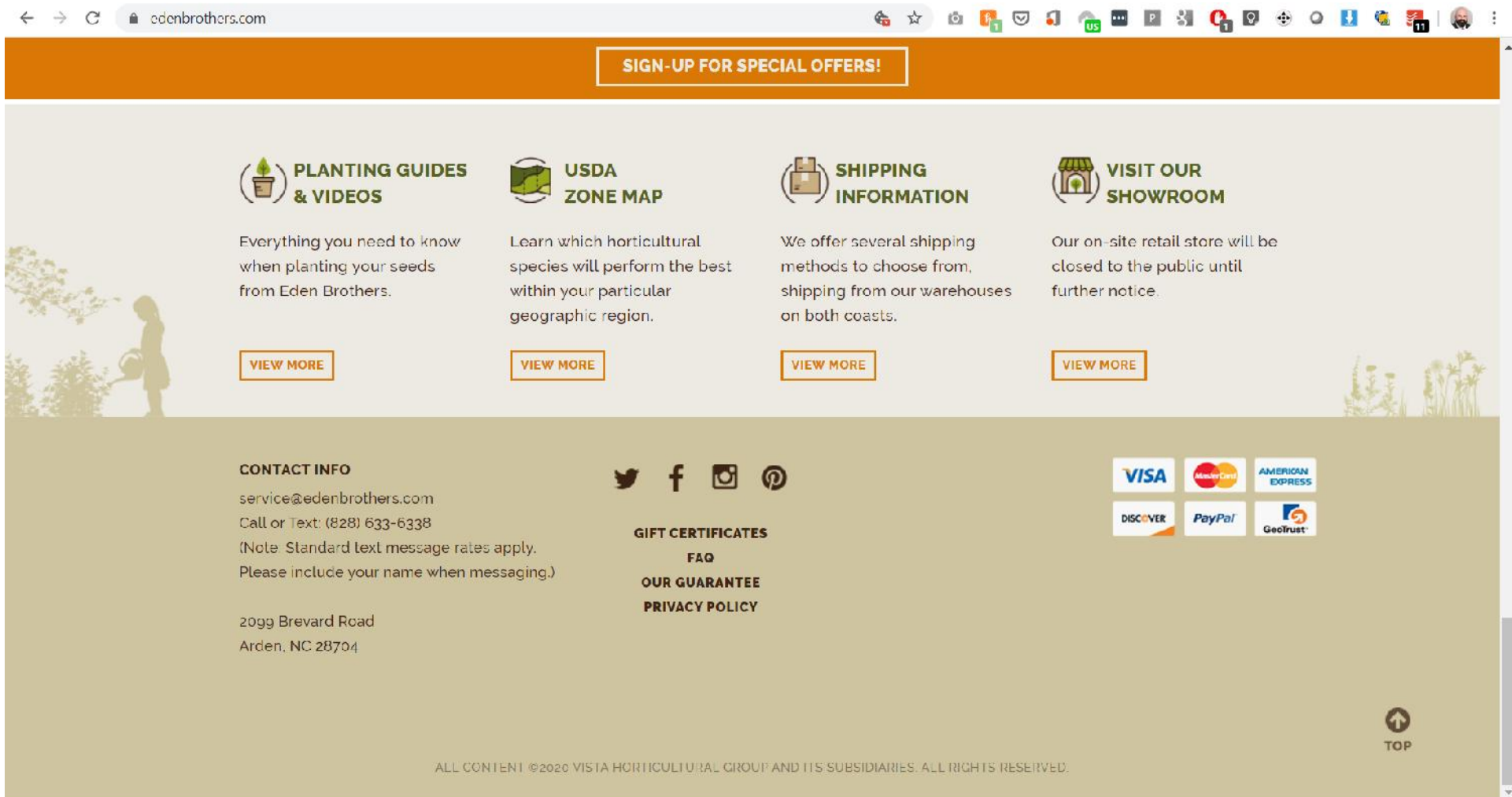
Name: Saxon Holt
Date: November 9, 2011

Complaint

EXHIBIT 3

Holt v. Vista Horticultural Group, Inc., et al.

Webpage from edenbrothers.com
with Copyright Notice for benefit of
Vista Horticultural Group, Inc. *et al.*



Complaint

EXHIBIT 4

Holt v. Vista Horticultural Group, Inc., et al.

Screen capture of edenbrothers.com
website displaying the Registered Work

